IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No.6 OF 2006

DATE OF DECISION: October 10,2006

The Commissioner of Income-tax, Karnal

.....Appellant

VERSUS

M/s Zhilmil Dhaba, G.T.Road, Karnal.

....Respondent

CORAM:- HON'BLE MR.JUSTICE J.S.NARANG

HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Mr. Yogesh Putney, Advocate,
for the appellant.

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RANJIT SINGH, J.

This Income-tax appeal has been filed, seeking reference of following substantial questions of law:-

"1. Whether the order of the Hon'ble ITAT is contrary to the spirit of Section 184 (5) of the Income Tax Act as the abovesaid assessee failed to produce the books of accounts in response to notice dated 18.6.02 issued under Section 142 (1) of the Act, which resulted in a failure in term of the provisions of Section 144 of the Act?

2. Whether the Hon'ble ITAT was right in law in holding that the conditions specified in Section 184 of the I.T. Act for assessing the firm as such can be rectified, particularly when it is given in Section 185 that if the conditions given in Section 184 are not complied then

the firm shall be assessed such as no deduction on account salary and interest to partners shall be allowed?"

The assessee in this case is aggrieved against his assessment done in the status of a AOP though the return of income was filed in the status of a firm. The appellant concern is a Dhaba at G.T.Road, Karnal. During a survey of the firm held under Section 133-A of the Income Tax Act (hereinafter referred to as `the Act'), some loose papers and documents were found and on consideration thereof, the assessee offered total income of Rs.7 lacs relating to financial year 1999-2000. During the annual year return 2000-2001, assessee declared an income of Rs.1,96,746/-. While doing so, the concern enclosed a certified copy of the partnership deed, claiming that it should be assessed in the status of a partnership. Assessing Officer, made reference to Clause 7 of the partnership deed which required the firm to keep usual customary books of account in the language and script acceptable to all the partners and that such books of account were not to be removed from the business premises without the consent of the parties. It was found that the said books of account of the firm were lying with one Rajesh Sharma, Accountant of the assessee firm. Finding this to be a violation of Clause 7 of the partnership deed, the Assessing Officer held that the assessee should be taken as AOP. This order was taken in appeal before C.I.T. (A), wherein it was held that the assessee firm did not fulfill the conditions prescribed in Section 184 (1) and (2) of the Act to become eligible for being assessed in the status of a firm. It was further found that the plea of assessee that the original partnership

deed had been filed during the course of assessment proceedings, would not make up the deficiency of not filling the copy of the partnership deed duly certified by all the partners alongwith the return of income as prescribed in the Act. Accordingly, dis-allowance of the interest and salary paid to the partners made by the Assessing Officer was confirmed.

Aggrieved against this order, the assessee preferred an appeal before the Income Tax Tribunal, Delhi (for short, "ITAT"). ITAT referred to an earlier order passed by CIT (A), wherein it has been held that mere fact that the books of account were not available with the assessee at the time of survey in the business premises, it cannot follow that the firm is not a genuine or that it did not exist in conformity with the terms and conditions of the partnership deed. It was also found that partnership is an agreement between the parties and they would be at liberty to have books of account with the Accountant of the firm by consent of all the partners. Noticing that the partnership having been evidenced by an instrument in writing, the Assessing Officer was not justified in concluding that the firm was not genuine on the grounds as stated in the order of assessment. Accordingly, ITAT found that the order of C.I.T. (A) in the earlier case did not call for any interference and the same was confirmed. Taking notice of the position that the C.I.T. (A) had passed a different order in the same set of facts and circumstances, ITAT held that the reasons as afore-mentioned would equally apply to the present case also. Accordingly, ITAT held that status of the assessee is directed to be adopted as that of a firm and the salary and interest paid to the partners is directed to be allowed as deductions. The appeal as such

was allowed.

The reasons recorded by ITAT are unexceptionable. Merely because the partnership deed was not kept with one of the partners and was with the Accountant of the assessee firm would not make the assessee to be an individual and not a firm. In our considered opinion, no question of law would arise in the case, which would call for interference in the instant appeal.

The same is accordingly dismissed.

(RANJIT SINGH)
JUDGE

November 10, 2006 **(J. S. NARANG)**
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